



Federal Communications Commission  
Washington, D.C. 20554

**DA 07-3916**  
**Released: September 14, 2007**

Jacob Farber, Esq.  
Dickstein Shapiro, LLP  
1825 Eye Street, N.W.  
Washington, DC 20006-5403

Joseph M. DiScipio, Esq.  
Fletcher, Heald and Hildreth, PLC  
1300 North 17<sup>th</sup> Street  
Arlington, VA 22209

Re: Assignment of License for  
WBUI(TV), Decatur, IL  
Facility ID No. 16363  
File No. BALCT-20070706ACJ

Dear Counsel:

This is in reference to the application for consent to assign the license for WBUI(TV), Channel 23 (CW), Decatur, Illinois, from ACME Television Licenses of Illinois, LLC (ACME) to GOCOM Media of Illinois, LLC (GOCOM). The application is unopposed. The application requests a waiver of Section 73.3555(b)(2) of the Commission's rules, the television duopoly rule, to permit GOCOM, licensee of WRSP-TV, Channel 55 (Fox), Springfield, Illinois, to acquire WBUI. Both WBUI and WRSP-TV are in the same Nielsen Designated Market Area (DMA), and their Grade B contours overlap.

Under Section 73.3555(b)(2) of the Commission's rules currently in effect,<sup>1</sup> two television stations licensed in the same DMA that have Grade B overlap may be commonly owned if: (i) at least one of the stations is not ranked among the top four stations in the DMA; and (ii) at least eight independently owned and operating, full-power commercial and non-commercial educational television stations would remain in the DMA after the merger. The Champaign & Springfield-Decatur DMA would not have eight independently owned and operated television stations post-merger. Thus, the proposed common

---

<sup>1</sup> 47 C.F.R. § 73.3555(b)(2). On June 2, 2003, the Commission adopted revised media ownership rules. *In re 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13691-92 (2003) ("2002 Biennial Regulatory Review"). The effective date of those rule changes, however, was subsequently stayed by order of the 3rd Circuit Court of Appeals on September 3, 2003. *Prometheus Radio Project v. FCC*, No. 03-3388 (3rd Cir. Sept. 3, 2003) (per curiam) ("*Prometheus*"). With respect to Section 73.3555(b)(2), the court continued the stay in *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004) ("*Prometheus Stay Order*"). On June 13, 2005, the Supreme Court of the United States denied a petition for writ of certiorari. 125 S.Ct. 2904 (2005).

ownership of WBUI and WRSP-TV would violate Section 73.3555(b)(2). GOCOM requested a waiver on the basis that WBUI is a “failing station.”<sup>2</sup>

**Duopoly Waiver Request.** The Commission’s *Local Ownership Order* established the criteria for a waiver of the television duopoly rule for a “failing station,” defined as one which has been struggling for “an extended period of time both in terms of its audience share and financial performance.” These criteria are:

- (a) One of the merging stations has had a low all-day audience share (*i.e.*, 4 percent or lower);
- (b) The financial condition of one of the merging stations is poor. “A waiver is more likely to be granted where one ...of the stations has had a negative cash flow for the previous three years;”
- (c) The merger will produce public interest benefits. “A waiver will be granted where the applicant demonstrates that the tangible and verifiable public interest benefits of the merger outweigh any harm to competition and diversity;” and
- (d) The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; selling the station to an out-of-market buyer would result in an artificially depressed price.<sup>3</sup>

If the applicant satisfies each criterion, a waiver of the rule will be presumed to be in the public interest.

As part of its waiver request, GOCOM attaches a chart showing Nielsen reported audience shares for the all-day share. The chart shows that, over the period from November 1998 to May 2007, WBUI’s all-day share was never higher than a 3 share.

With respect to WBUI’s financial condition, ACME appends financial data intended to show negative cash flow for the three years preceding the filing of the instant application.<sup>4</sup> In addition, in a Declaration, Thomas D. Allen, ACME’s Executive Vice President and Chief Financial Officer, opines that “there is no likelihood of any change in the station’s negative financial posture without the efficiencies of joint operation.”

---

<sup>2</sup> See 47 C.F.R. § 73.3555, Note 7. See also *Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12935-40 (1999) (“*Local Ownership Order*”), *recon. granted in part*, 16 FCC Rcd 1067 (2001).

<sup>3</sup> *Local Ownership Order*, 14 FCC Rcd at 12939.

<sup>4</sup> ACME requested confidential treatment for this material pursuant to Sections 0.457 and 0.459(a) of the Commission’s rules.

Mr. Allen explains that the station's historically poor financial condition is rooted in the fact that it is located in the Champaign & Springfield-Decatur television market, the 82<sup>nd</sup> ranked DMA, but is sandwiched between the 3<sup>rd</sup> (Chicago), 21<sup>st</sup> (St. Louis), 116<sup>th</sup> (Peoria-Bloomington) and 151<sup>st</sup> (Terre Haute) DMAs. As a result, Mr. Allen explains that many national advertisers can find many other television stations to carry their commercials. The competition from other markets is "particularly intense," Mr. Allen maintains, because WBUI's Grade B signal is overlapped by 8 commercial signals from outside of the Champaign & Springfield-Decatur DMA.

GOCOM maintains that the assignment of WBUI will benefit the public interest. In a declaration included with the waiver request, Richard L. Gorman, the President and CEO of GOCOM, outlines some of these benefits. First, Mr. Gorman states that GOCOM will maintain the separate affiliations for WRSP-TV (Fox) and WBUI (CW) and locally employ station staff. Mr. Gorman also argues that GOCOM weather capabilities will be better able to warn WBUI viewers of emergency weather and closures due to the weather. Mr. Gorman also pledges that GOCOM will increase the community outreach efforts of WBUI. Mr. Gorman points out that GOCOM established the "Fox Scene," an informative and public service programming feature, when it purchased WRSP-TV and has just launched two community oriented web-sites, one serving Springfield exclusively and one serving Champaign exclusively. Mr. Gorman pledges that GOCOM will launch a similar web site serving Decatur (WBUI's city of license and primary service area). Mr. Gorman also states that GOCOM will continue to increase its community presence and bring its community affairs resources to WBUI. For example, Mr. Gorman promises that GOCOM will add locally produced weather and public service inserts to the daily news program "The Daily Buzz" airing on WBUI. Mr. Gorman also pledges that GOCOM will produce a quarterly public affairs feature to air on WBUI.

In addressing the fourth criterion, Mr. Allen states that ACME retained The Blackstone Group (Blackstone), a national investment firm, to market the sale of WBUI (and other ACME stations). Blackstone prepared a package of material describing WBUI's assets and finances for distribution to prospective buyers and made what Mr. Allen describes as "concerted efforts to secure a purchase proposal from a third party." Mr. Allen maintains that none of those efforts produced any meaningful interest in WBUI, let alone a letter of intent or an executed contract. On or about May 4, 2007, Blackstone's engagement with ACME was terminated. Mr. Allen states that ACME recognized that only an in-market buyer "would be able to enjoy the efficiencies needed to transform WBUI into a positive cash flow enterprise." ACME contacted parties with other television stations in the same DMA and that effort ultimately resulted in the execution of the Asset Purchase Agreement with GOCOM.

**Discussion.** We will grant the parties' request for a waiver of the television duopoly rule, and we will grant the assignment application. On balance, based upon the showings submitted under the waiver criteria established by the Commission in the *Local Ownership Order*, we are persuaded that grant of a waiver is warranted on grounds that WBUI is a "failing station."

Specifically, the parties have demonstrated that WBUI has a low audience share. Significantly, the station's audience share has been below 4 percent since at least 1998. Furthermore, the financial documentation submitted by the parties shows that WBUI's financial condition is poor. In reviewing the financial information submitted by the parties, we are persuaded that WBUI is failing to such an extent that its ability to be a viable voice in the Champaign & Springfield-Decatur market is severely hampered.

Specifically, the parties have shown that the station's location and competition from out-of-market stations have placed it at a competitive disadvantage.

Given these operational circumstances, it is not surprising that little news, public affairs, or other public interest programming is currently being provided by the station.<sup>5</sup> The proposed merger would address these shortcomings, and we find important public interest benefits will accrue from the combined operation of WBUI and WRSP-TV. For example, GOCOM has pledged to improve WBUI's weather and emergency announcement capabilities, as well as its community outreach capabilities. Finally, the parties have established that GOCOM is the only reasonably available buyer for station WBUI.

Consistent with the *Local Ownership Order*, we find that the combined operation of WBUI and WRSP-TV will pose minimal harm to our diversity and competition goals because WBUI's financial situation hampers its ability to be a viable voice in its market. Under these circumstances, allowing WBUI to be operated by a stronger station in the market will result in a definite improvement in facilities and programming, an outcome which clearly benefits the public interest.<sup>6</sup>

Having found the applicants fully qualified, we find that grant of the WBUI assignment application would serve the public interest.

Accordingly, IT IS ORDERED, That the request for a "failing station" waiver of the television duopoly rule, Section 73.3555(b)(2), to permit GOCOM to own and operate both WBUI and WRSP-TV, IS GRANTED.

IT IS FURTHER ORDERED, That the application for assignment of license (File No. BALCT-20070706ACJ) of Station WBUI(TV), Decatur, Illinois, IS GRANTED.

Sincerely,

Monica Shah Desai  
Chief, Media Bureau

---

<sup>5</sup> As the *Local Ownership Order* indicated, failing stations "rarely have the resources to provide local news programming, and often struggle to provide significant local programming at all." *Local Ownership Order*, 14 FCC Rcd at 12939.

<sup>6</sup> *Local Ownership Order*, 14 FCC Rcd at 12939; see also *WCNW LLC*, 21 FCC Rcd 13522 (MB 2006); *KSMO Licensee, Inc.*, 20 FCC Rcd 15254 (MB 2005).